REMARKS

I. INTRODUCTION

In response to the Office Action dated March 16, 2005, the claims have not been amended. Claims 1, 3-14, 16-27, and 29-39 remain in the application. Re-consideration of the application is requested.

II. PRIOR ART REJECTIONS

On page (3) of the Office Action, claims 1-7, 9, 12-20, 25-33, 35, and 39 were rejected under 35 U.S.C. §102(e) as being anticipated by Borella et al., U.S. Patent No. 6,182,125 (Borella). On page (6) of the Office Action, claims 8, 21, and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Borella in view of Merriam, U.S. Patent Application No. 2004/0153792. On page (7) of the Office Action, claims 10-11, 23-24, 36-37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borella in view of Harter et al., U.S. Patent No. 6,212,564 (Harter).

Applicant respectfully traverses these rejections.

Specifically, the independent claims were rejected as follows:

> As per claims 1 and 27, Borella et al teaches a computer-implemented method for obtaining information across a network comprising: determining a speed of a network connection to which a computer is attached (See col. 5, lines 8-18); and obtaining information from across the network connection based on the speed of the network connection, wherein a size of the information to be obtained decreases as the speed of the network connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8).
>
> As per claim 14, Borella et al teaches a computer-implemented system for obtaining information across a computer network comprising: (a) a client (See col. 2, lines (10-11); (b) an adaptive agent executing on the client, wherein the adaptive agent is configured to: (i) determine a speed of a network connection to which a computer is attached; and (ii) obtain information from across the network connection based on the speed of the network connection, wherein a size of the information to be obtained decreases as the speed of the network connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8).

Applicant traverses the above rejections for one or more of the following reasons:

(1) Borella fails to teach, disclose or suggest a calibrated object library on a server;

(2) Borella fails to teach, disclose or suggest a client transmitting a request to a server for an object of a pre-known size and properties;

(3) Borella fails to teach, disclose or suggest a client obtaining the object of pre-known size and properties across a network; and

(4) Borella fails to teach, disclose or suggest a round-trip response time as the time from a client request to a server through the obtaining of the object from the server.

Independent claims 1, 14, and 27 are generally directed to obtaining information across a network based on a speed of the network connection (wherein the size of the information decreases as the speed of the network decreases). To accommodate the different sizes of information to be obtained, the claims provide the ability to determine the speed of the network connection in a specific manner. In this regard, a calibrated object library on a server is used. The client transmits a request, across the network connection, to the calibrated object library on the server, for an object of a pre-known size and properties. Once requested, the requested object is obtained/transmitted back to the client across the network connection. The speed of the network is then based on a measurement of the round-trip response time calculated from the transmitting of the request for the object (i.e., from the client) to completion of obtaining the object from across the network connection (from the server).

The cited references do not teach nor suggest these various elements of Applicant's independent claims.

Borella merely describes a method for improving perception of electronic content from a computer network such as the Internet or an intranet. Network latencies and the type of electronic content such as text, graphical images, animation, voice, video and other electronic content interact to influence user perception of the quality of information provided. As network latency increases and becomes more variable, users typically become less satisfied. The method dynamically adjusts the amount of electronic content presented to user based on a determined network latency. The amount of electronic content is also adjusted progressively and underlying transport protocol such as Transmission Control Protocol ("TCP") and User Datagram Protocol ("UDP") are adaptively adjusted based on the type of electronic content requested (e.g., TCP for text, UDP for graphical images, etc.). Borella's method may improve user perception of requested original electronic content by dynamically sending an amount of original electronic content based on a determined network latency. Further, Borella may provide improved user perception of original electronic content to help attract and retain, students, customers, contributors, etc. to an organization's electronic content site on a computer network (e.g., a home page on the Internet or an intranet). (See Abstract).

In rejecting the claims, the final Office Action relies on a lack of novelty under 35 USC 102(e). Firstly, Applicant respectfully traverses such an assertion under 35 U.S.C. § 102(e) because the disclosure of Borella fails to meet the threshold for anticipation, i.e. placing the public in possession of the claimed invention. Specifically, anticipation under 35 U.S.C. § 102 has strict requirements that all elements of the claim must be found in a single reference in order to support an anticipation rejection (see e.g. M.P.E.P. 2131). A claim is anticipated only when a single prior art reference discloses each and every limitation in the claim. See, e.g., *Glaxo Inc. v. Novopharm Ltd.*, 34 USPQ2d 1565 (Fed. Cir. 1995). Applicant submits that Borella completely fails to anticipate the present claims for at least the reasons stated above. For example, Borella completely fails to teach the specifically claimed element of a calibrated object library on a server. Without teaching this element, it is impossible for Borella to anticipate the current claims.

In addition to the lack of anticipation, Borella also fails to teach, disclose, or suggest the invention under an obviousness standard. In rejecting the claims, the final Office Action submits that the client transmission to the object library, the return of the object of the pre-known size, and the calculation of the round-trip response time is anticipated in col. 5, lines 27-44 where Borella describes the network latency. Applicant disagrees with and traverses these assertions. Col. 5, lines 27-44 provide:

> In another preferred embodiment of the present invention, network latency is determined at Step 24 by sending a small portion of the requested original electronic content 14 to the user computer. The web server records a time at which it sends a small portion of the requested original electronic content 14 such as one complete HTML page. The network browser on the user computer requests other original electronic content such as graphical images after the network browser parses Uniform Resource Locators ("URLs") in the HTML page. The time between transmission of the one complete HTML page and reception of the request for the first original electronic content such as graphical images can be used as a round-trip network latency estimate. Using this method to determine network latency at Step 24 does not allow a network latency estimate to be determined for a first HTML page sent. Instead this method provides a network latency estimate that can be used to determine an amount of original electronic content at Step 26 to send to the user computer in the future.

This text expressly differs from that recited in the claims. As can be seen, the client requests a web page. In response, the web server does not send what the client requested. Instead, the web server sends "a small portion of the requested original electronic content". In other words, instead of the client requested an object of a pre-known size and properties, Borella's client requests content and the server elects to send something different. In this regard, Borella's server does not send an object of a pre-known size and properties but merely sends a portion of requested original content.

The text provides that an example of such content is one complete HTML page. The client then processes/parses the HTML page for various URLs. The client then requests such URLs from the server. Based merely on the small portion of content sent and the subsequent request for further content by the client to the server, Borella's server calculates the network latency. In this regard, Borella provides that the network latency is measured on the server side and consists of the "time between transmission of the one complete HTML page and reception of the request for the first original electronic content".

As can be seen by the above cited text and summary, Borella does not even remotely describe the claimed process or elements. Specifically, instead of teaching the claimed client transmitting a request for an object of a pre-known size and properties from a calibrated object library, Borella's client merely requests web content. Further, instead of teaching the client obtaining the object of the pre-known size and properties from across the network connection, Borella teaches the server merely sending a small portion of the web content actually requested to the client. In other words, Borella does not send the web object requested but sends content different from that requested. In addition, instead of the client calculating a round-trip response time from the client request to the server and the receipt of the object back at the client, Borella teaches a server based network latency as the time from when content (and not an object) is sent to the client followed by receipt of a subsequent request from the client (wherein the request is found by the client when the client parses the small portion of content sent by the server).

Applicant also notes that as part of Borella's measuring of network latency on the server side, Borella's network latency contains timing for client based delays. In this regard, Borella's network latency includes the time it takes for the client to process and parse the content (sent by the server) and to request subsequent content. Such timing cannot be compared to the lack of client based delay as claimed that merely includes the request for a specific object (by the client to the server) and the return of the object (to the client from the server) without any client based processing of the object or parsing to determine which further content to request or send.

Again, the elements set forth in Borella are not even remotely similar to that disclosed or set forth in the present claims. In this regard, not only does Borella fail to teach, disclose, or suggest the specific client based request set forth in the claims, but Borella also fails to teach, disclose, or suggest

the calibrated object library, the server sending the requested specific object to the client, and the round-trip response time based on the client request followed by the return of the specific object.

In view of the above, Applicant submits that it is not possible for Borella to anticipate the current claims and their limitations. In addition, the other cited references also fail to cure Borella's deficiencies. In this regard, the various elements of Applicant's claimed invention together provide operational advantages over the systems disclosed in Borella, Merriam and Harter. In addition, Applicant's invention solves problems not recognized by Borella, Merriam and Harter.

Thus, Applicant submits that independent claims 1, 14, and 27 are allowable over Borella, Merriam and Harter. Further, dependent claims 3-13, 16-26, and 29-39 are submitted to be allowable over Borella, Merriam and Harter in the same manner, because they are dependent on independent claims 1, 14, and 27, respectively, and because they contain all the limitations of the independent claims. In addition, dependent claims 3-13, 16-26, and 29-39 recite additional novel elements not shown by Borella, Merriam and Harter.

III. CONCLUSION

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

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By their attorneys,

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